United States District Court

EASTERN DISTRICT OF OKLAHOMA

In the Matter of the Search of the premises Located at 427551 E 1148 Road, Porum, Oklahoma 74455

Case No. 21-MJ-353-DDB

APPLICATION FOR SEARCH WARRANT

I, Ashley N. Stephens, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that there is now concealed on the following person or property located in the **EASTERN** District of **OKLAHOMA** (identify the person or describe property to be searched and give its location):

SEE ATTACHMENT "A"

The person or property to be searched, described above, is believed to conceal (identify the person or describe the property to be seized):

SEE ATTACHMENT "B"

The bas	is for the search under Fed. R. Crim. P. 41(c) is (check one or more):
	 ☑ evidence of a crime; ☑ contraband, fruits of crime, or other items illegally possessed; ☐ property designed for use, intended for use, or used in committing a crime; ☐ a person to be arrested or a person who is unlawfully restrained.
The sear on these facts:	rch is related to a violation of Title 18, United States Code, Section(s) 922(g)(1), and the application is based
	 ☑ Continued on the attached sheet. ☑ Delayed notice of days (give exact ending date if more than 30 days:) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet. Ashley N. Stephens Senior Special Agent, ATF

Sworn to before me this date,

Date:

City and state:

8/31/2021

Muskogee, Oklahoma

Judge's signature

UNITED STATES MAGISTRATE JUDGE

Don Q Bush

Printed name and title



AFFIDAVIT IN SUPPORT OF AN APPLICATION FOR A SEARCH WARRANT

I, Ashley N. Stephens, being first duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

- 1. I am a Senior Special Agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). I have been so employed since July of 2004. I am currently the Resident Agent in Charge for the ATF Tulsa I Field Office. Before joining the ATF, I was employed as a Police Officer with the Tahlequah Police Department, in Tahlequah, Oklahoma, for three years. I successfully completed the Council on Law Enforcement Education and Training Academy as required by the State of Oklahoma for peace officer certification. I also completed the Criminal Investigator Training Program required by the ATF to be an ATF criminal investigator. I also completed the Special Agent Basic Training Academy required by ATF for all special agents employed by ATF. In connection with my official duties as an ATF Special Agent, I investigate criminal violations of Federal Firearms Laws, Federal Arson Laws, Federal Explosives Laws and Federal Narcotics laws.
- 2. I hold a Bachelor of Science Degree in Criminal Justice from Northeastern State University and I also have a Master of Forensic Science Degree from Oklahoma State University.
- 3. During the first four (4) years of my employment with ATF, I was assigned to the North Texas High Intensity Drug Trafficking Area (HIDTA) Violent Crime Task Force where I was responsible for investigating criminal violations of Federal Firearms Laws and the Controlled Substances Act. I was the lead case agent for an Organized Crime Drug Enforcement Task Force (OCDETF) which resulted in numerous drug and firearm seizures. I have been the affiant for numerous state and federal search warrants. I have been involved in multiple investigations over my career which have resulted in the seizure of controlled substances and firearms, resulting in the

successful prosecution of individuals involved. During my career, I have received hundreds of hours of training, including training regarding the investigation of those who are involved in the armed illicit distribution of controlled substances and training regarding individuals who commit fraudulent acts. I have received training and have experience including, but not limited to, working in an undercover capacity, surveillance, management of confidential informants, drug-trafficking conspiracies, money laundering, organized criminal activity investigations, the preparation and execution of firearm and drug related search warrants and debriefing of informants and witnesses.

- 4. I am an ATF Certified Explosives Specialist (Certification Number 12-42) and as such have received numerous hours of training regarding explosives and the investigation of explosive cases. I have attended numerous explosive schools i.e., Certified Explosive Specialist Basic, Advanced Explosives Disposal Techniques, Chemistry of Pyrotechnics, Homemade Explosives Identify Process and Disposal, and Naval Basic Improvised Explosive Devices to name a few. I am also well versed in the Federal firearms laws.
- 5. I have received and completed the Firearms Interstate Nexus Training Basic School, provided by the ATF Firearms Technology Branch in Martinsburg, WV. During the training at the Firearms Interstate Nexus Training Course in Martinsburg, WV, I personally examined the ATF Firearms Technology Branch's Reference Collection, which includes approximately 10,000 firearms. In the course of my duties in establishing firearms interstate commerce, I have consulted various firearm publications and periodicals, have accessed official licensing files and have examined other documents. I have also consulted with other firearms experts, all of which leads to my expertise in the movement of firearms in interstate commerce. As an expert I have testified in federal court regarding interstate nexus and firearms' subsequent effect on and travel status of firearms as they pertain to interstate commerce.

- 6. I am also a Certified Fire Investigator responsible for providing technical support and analysis to assist other ATF Special Agents in fire investigations and training activities. This technical support includes: fire origin and cause determinations, court preparation and presentation of evidence, technical interpretation of fire-related information, and presentation of expert witness opinions.
- 7. As a result of my training and experience as an ATF Special Agent, I know that it is a violation of Title 18 United States Code 922(g)(1) for any person who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year, to possess any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.
- 8. As a result of my training and experience as an ATF Special Agent, I am familiar with certain federal criminal laws and understand that it is a violation of Title 18 United States Code Section 922(g)(1) for a person convicted of a felony offense to possess a firearm or ammunition that has traveled in or affected interstate or foreign commerce.
- 9. As an ATF Special Agent, I know through my experience that most individuals who purchase firearms retain certain documents relating to those purchases, such as sales receipts, factory warranties, and cancelled checks, among their personal papers in their residence or where they store their personal property. Affiant also knows through my experience, individuals who possess firearms also possess related items such as gun cases, ammunition, and gun cleaning equipment related to the care and maintenance of the firearms.
- 10. As an ATF Special Agent, I have found that convicted felons will hide firearms, ammunition and receipts/invoices related to the acquisition and disposition of firearms in all areas of their property, which includes, but is not limited to residence, outbuildings, appurtenances, and vehicles.

- As an ATF Special Agent, I know from my participation in the execution of 11. numerous search warrants authorizing the seizure of firearms that those who own and possess firearms and ammunition generally keep them on their persons, in their residences and vehicles, or in places where they store their personal property. The reason owners of firearms generally maintain and preserve them over a long period of time include the facts that firearms are somewhat expensive, there is an administrative delay in buying them (particularly true for convicted felons who must obtain firearms by subterfuge) and firearms do not easily wear out. In my experience, firearms are not depleted through use, nor are they exchanged immediately after being obtained. Firearms are like expensive tools, which their owners keep and maintain over long periods of time. The reason owners of firearms generally maintain firearms and ammunition in and about their home or vehicles include the fact that possession of them in and about the home or vehicles permits easy access to the firearms and ammunition. Additionally, firearms must be maintained in an environment where they will be secure from theft, as well as safe from rust and corrosion. In the residence, in the vehicle and on the person, the firearm is readily available in the event the need for use arises.
- 12. The facts in this affidavit come from my personal observations, my training and experience, and information obtained from other agents and witnesses. This affidavit is intended to show merely that there is sufficient probable cause for the requested warrant and does not set forth all of my knowledge about this matter.
- 13. Based on my training and experience and the facts as set forth in this affidavit, there is probable cause to believe that a violation of Title 18 United States Code Section 922(g)(1), Felon in Possession of a Firearm, has been committed by JUSTIN NESS. There is also probable cause

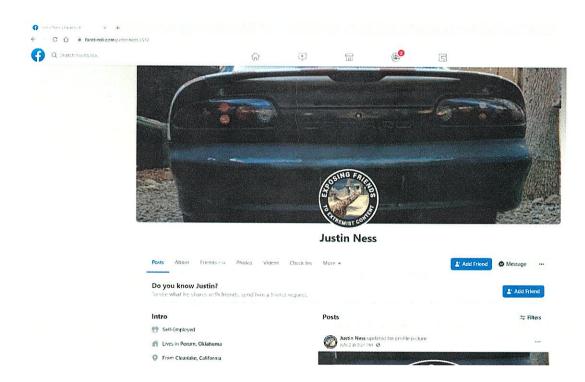
to search the information described in Attachment A for evidence of these crimes as described in Attachment B.

CRIMINAL HISTORY

14. On July 30, 2021, I investigated NESS's criminal history and discovered NESS was arrested in Killeen, TX for driving while intoxicated on 6/15/2002. NESS received a misdemeanor conviction for this arrest. NESS was also arrested on 7/3/2003 in the State of California for Assault with a Deadly Weapon (not a firearm) causing Serious Bodily Injury. NESS received a felony conviction for this offense on 2/13/2004 for which he was sentenced to five (5) years in the California Department of Corrections. On 5/26/2009, NESS was arrested for Violation of Parole. On 7/29/2012, NESS was arrested by the Texarkana Police Department for 2nd Degree Assault of a Family or Household Member. No disposition could be determined at this time. On August 16, 2021, I received certified documents from the California Department of Corrections, confirming the felony conviction of NESS for the Assault with a Deadly Weapon causing Serious Bodily Injury. In regard to the violation of parole and the 2nd Degree Assault of a Family or Household Member, dispositions regarding said cases have not been ascertained.

PROBABLE CAUSE

- 15. On July 23, 2021, I received an email from FBI SSA Terry Heatherman in reference to JUSTIN MILES NESS. According to the email, NESS had been reported to the FBI and the United States Capital Police for making threats against United States Congressman Mike Thompson. FBI received information that NESS is a convicted felon and has been seen on Facebook in possession of a firearm. Based on this information, FBI referred the matter to ATF.
- 16. I then conducted an open-source search of Facebook and found a Facebook profile of JUSTIN NESS (www.facebook.com/justin.ness.3572), screenshot is displayed below:

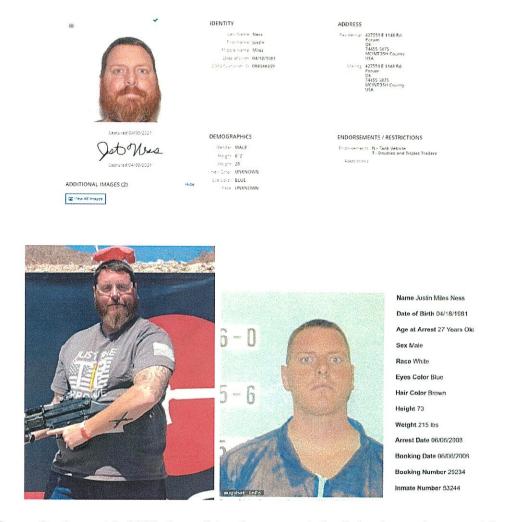


17. I was able to view the public portion of the Facebook account and observed that the profile listed that NESS lives in Porum, Oklahoma and is from Clearlake, California. I also observed photographs of NESS holding what appears to be a M249 Saw Machine gun (lightweight machine gun chambered in 5.56 mm and can be used with belt fed ammunition or a 30-round magazine). This picture was dated April 25, 2021.



18. Facebook was sent a preservation request for the account, pending service of a search warrant for additional records. I requested the Oklahoma Driver's License photograph of

NESS, which listed his home address as 427551 E 1148 Road, Porum, Oklahoma, within the Eastern District of Oklahoma. I compared the driver's license photograph to the photograph from Facebook, along with a mugshot from the Parole Violation arrest in California. All appear to be the same individual, identified as Justin Miles NESS (DOB 4/18/1981 SSN XXX-XX-6287).



19. On August 3, 2021, I sought and was granted a federal search warrant for the Facebook account of Justin NESS. On August 12, 2021, I received compliance from Facebook. During an evidentiary search of the records, I observed several conversations regarding firearms and numerous photographs. (It should be noted that not all gun conversations or firearms photographs are attached herein. Only a sampling has been included for the court's

determination of probable cause.) For instance, on 12/26/2020, NESS replied to a comment and said, "Those bastards sold me a used gun."

Time 2020-12-26 07:23:01 UTC

Type Comments

Summary Justin Ness replied to a comment on a post from December 25, 2020.

`@[600667016:2048:Summer Fournier] those bastards sold me a used gun`

Object Id S: I100034039780973:418928355918487:6

20. On 3-21-2021, NESS replied to a comment and said, "You sure do seem to have your panties in a twist to say you're not mad lol and spent a whole lot of time trying to convince me of something I don't give a shit about, the cost of living is a quarter of what California's is and I can have my gun on my hip to defend myself instantly and those two reason alone were good enough the fact my taxes are half what they were in California is a plus."

Time 2021-03-21 23:34:40 UTC

Type Comments

Summary Justin Ness replied to your comment on a post from March 21.

`@[100001892346180:2048:Teufel Wulf] you sure do seem to have your panties in a twist to say you're not mad lol and spent a whole lot of time trying to convince me of something I don't give a shit about, the cost of living is a quarter of what California's is and I can have my gun on my hip to defend myself instantly and those two reasons alone were good enough the fact my taxes are half what they were in California is a

plus.`

Object Id S:_I100034039780973:143303184349142:66

21. On 3/24/2021, NESS replied to a comment and stated, "Your comment proves you don't know shit about guns, an AR wouldn't do shit to an elk, but my AR keeps my government from enslaving me."

Time 2021-03-24 17:44:22 UTC

Type Comments

Summary Justin Ness replied to a comment on a post from March 24. `@[1168666001:2048:Suki

Elisha Strong] your comment proves you don't know shit about guns an AR wouldn't

do shit to an elk but my ar keeps my government from enslaving me'

Object Id S: 1100034039780973:190859445909171:67

22. On 5/10/2021, NESS was engaged in a Facebook Messenger conversation with Shyann Elizabeth Nadeau. Nadeau asked NESS if he had any interest in buying a Steiger Model 1873 45 Long Colt Single Action Revolver that came with a box of 50 rounds of ammunition for \$450. NESS said that he would give them an answer on Thursday.

Author Shyann Elizabeth Nadeau (Facebook: 1108267339)

Sent 2021-05-10 23:56:14 UTC

Body Hey would you have any interest in buying a Steiger model 1873 45 long cold single action revolver?

Author Justin Ness (Facebook: 100034039780973)

Sent 2021-05-10 23:58:37 UTC

Body How much?

Author Shyann Elizabeth Nadeau (Facebook: 1108267339)

Sent 2021-05-10 23:59:10 UTC

Body Comes with a box of 50 shells he said he'd take 450 for it

Author Justin Ness (Facebook: 100034039780973)

Sent 2021-05-11 00:09:36 UTC

Body Sounds like a deal can I give you an answer Thursday when I get paid?



23. On 5/11/2021, NESS was engaged in a Facebook Messenger conversation with Shyann Elizabeth Nadeau. In this conversation, NESS tells Nadeau that he can't find where he left his pistol, but was told that it was in his daughter, Adrienne's room.

Author Shyann Elizabeth Nadeau (Facebook: 1108267339)

Sent 2021-05-11 17:33:27 UTC **Body** How are you getting settled?

Author Justin Ness (Facebook: 100034039780973)

Sent 2021-05-11 17:34:09 UTC

Body Ok I guess I can't find where I left my pistol lol

Author Shyann Elizabeth Nadeau (Facebook: 1108267339)

Sent 2021-05-11 17:34:50 UTC Body Oh shit that's not good lol wtf

Author Justin Ness (Facebook: 100034039780973)

Sent 2021-05-11 17:36:14 UTC

Body Geoff said I put it in Adriennes room maybe when I finish putting everything in there away I'll find it

24. On 6/19/2021, NESS replied to a comment and said, "that's not an AR in my hand and you thinking it is an AR is why we laugh at you people trying to dictate to us about guns. That's a M249 machine gun."

Time 2021-06-19 13:40:01 UTC

Type Comments

Summary Justin Ness replied to a comment on a post from June 18.

`@[100000482653936:2048:Lisa Dillman] that's not an AR in my hand and you thinking it is an AR is why we laugh at you people trying to dictate to us about guns that's a M249 machine gun`

Object Id S:_I100034039780973:5232673026825709:87

25. On 6/23/2021, NESS commented on a post and said, "But in that sense we also can carry a gun anywhere concealed or open and buy them anywhere without government intervention."

Time 2021-06-23 18:41:10 UTC

Type Comments

Summary Justin Ness commented on a post from June 23. `But in that sense we also can carry a

gun anywhere concealed or open and buy them anywhere without government

intervention`

Object Id S:_I100034039780973:1431996843824860:111

26. On 6/28/2021, NESS replied to a comment on a Facebook thread and stated, "You sure scoured my profile reacting to posts from years ago and came up with nothing but I carry a gun huh?"

Time 2021-06-28 03:10:50 UTC

Type Comments

Summary Justin Ness replied to your comment on a post from June 27.

`@[100012530921688:2048:Samantha Stephens] you sure scoured my profile reacting to posts from years ago and came up with nothing but that I carry a gun

huh'

Object Id S:_I100034039780973:5264741580285520:42

27. On 7-11-2021, NESS was engaged in a Facebook Messenger conversation with Shyann Elizabeth Nadeau. Nadeau told NESS that, "Brandon said he'd buy that gun for you if you went in halves on the gun he wants." NESS asked what he wants, to which Nadeau said a Glock 9mm slim slide for \$500. NESS then told her that he spent most of remaining money on a Bowflex home gym.

Author Shyann Elizabeth Nadeau (Facebook: 1108267339)

Sent 2021-07-11 23:06:47 UTC

Body Brandon said he'd buy that gun for you if you went in halves on the gun he wants [[]]

Author Justin Ness (Facebook: 100034039780973)

Sent 2021-07-11 23:25:25 UTC

Body What does he want?

Author Shyann Elizabeth Nadeau (Facebook: 1108267339)

Sent 2021-07-11 23:26:02 UTC

Body We were at academy getting him work pants and he saw a glock 9mm slim slide or some shit for \$500 □□

28. On 7-13-2021, while engaged in the Facebook Messenger with Nadeau, Nadeau says that "Brandon wants gun advice." She then asks, "A Springfield XD 9mm or the Smith-Wesson M&P Shield Plus." NESS responds and said, "The Shield is what I have it's a compact."

Author Shyann Elizabeth Nadeau (Facebook: 1108267339)

Sent 2021-07-13 00:57:57 UTC Body Brandon wants gun advice

Author Shyann Elizabeth Nadeau (Facebook: 1108267339)

Sent 2021-07-13 00:57:59 UTC

Body A Springfield XD 9mm or the Smith-Wesson M&P shield plus

Author Justin Ness (Facebook: 100034039780973)

Sent 2021-07-13 03:53:28 UTC

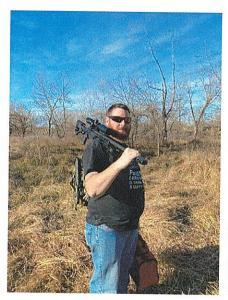
Body The shield is what I have it's a compacy

Author Justin Ness (Facebook: 100034039780973)

Sent 2021-07-13 03:53:33 UTC

Rady Compact

29. There were numerous photographs of firearms in NESS' account. I observed a picture of NESS holding a rifle over his shoulder. There was also a video posted of NESS shooting the same firearm. It appeared as though the video was uploaded on Facebook 12/27/2020.





30. There was a picture of a Smith and Wesson semi-automatic pistol which appeared to match the description of the firearm NESS told Nadeau he possessed on 7/13/2021.



31. There were also numerous pictures of NESS holding the M249 machine gun. Based on the Facebook comments and posts observed, NESS went to Las Vegas, NV in April of 2021. NESS and friends went to the Pro Gun Club at 12801 Old US Highway 95 South, Boulder City,

NV 89005 and appeared to have rented the machine gun and other guns to shoot. A video of NESS firing the M249 in fully automatic was observed within the account as well.

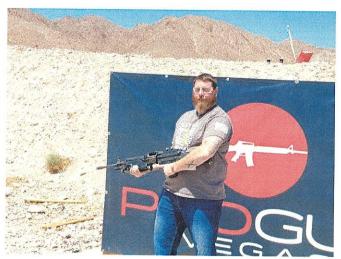
Author Rachel Varville (Facebook: 100006121058056)

Sent 2021-04-11 16:50:21 UTC

Body Here's the address we're going to meet at on 4/18 at 1130am in case we get split up:
PRO GUN CLUB
12801 OLD US HWY 95 SOUTH
Boulder City NV 89005





















32. In regard to where NESS is currently living, on 12-25-2020, NESS posted a photograph that said, "Home sweet home, Adrienne already picked out her room."



33. I observed a conversation on Facebook between NESS and Rachel Varville. On 6-20-2021, Varville asked NESS what his address was, to which NESS responded with 427551 E 1148 Road, Porum, OK 74455. There were numerous other messages throughout Facebook where NESS indicated that was currently living in Porum, Oklahoma.

Author Rachel Varville (Facebook: 100006121058056)

Sent 2021-06-20 23:33:37 UTC

Body What's your address

Author Rachel Varville (Facebook: 100006121058056)

Sent 2021-06-21 00:43:27 UTC

Body Happy Father's Day!

Author Justin Ness (Facebook: 100034039780973)

Sent 2021-06-21 01:25:44 UTC

Body Thank you what did you do for Curtis?

Author Justin Ness (Facebook: 100034039780973)

Sent 2021-06-21 01:26:03 UTC

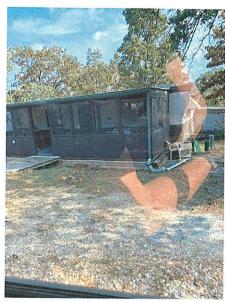
Body 427551 e 1148 rd porum ok 74455

- 34. As noted above, I had requested the driver's license information regarding NESS. NESS has an Oklahoma Driver's License and lists his address at 427551 E 1148 Road, Porum, Oklahoma 74455.
- 35. On August 17, 2021, ATF SA Darrell Withem conducted surveillance at 427551 E 1148 Road, Porum, Oklahoma. SA Withem observed a single wide trailer matching the residence that NESS stated was "Home Sweet Home." The number "17" was on the trailer to the right of the front door (which faces south) and on the west side of the trailer. SA Withem also observed the same Chevrolet Camaro in the driveway that was observed in the picture posted by NESS.









- 36. Based on the appearance of the firearm in the listed pictures, I believe one of the firearms to be a Fabrique Nationale M249 Machine Gun. Additionally, the Smith and Wesson Shield that was observed in the listed picture and as described by NESS is a firearm. Based on my training and experience these types of firearms are manufactured outside the State of Oklahoma and therefore if found in Oklahoma, have traveled in interstate or foreign commerce. The firearms are classified as firearms, which the term "firearm" is defined in Title 18, United States Code Chapter 44, Section 921(a)(3).
- 37. In summation, it is apparent that NESS is an avid firearm enthusiast. From his postings, group memberships, conversations and pictures, I believe NESS to currently be in possession of firearms and ammunition. Furthermore, he stated that he currently has a Smith and Wesson Shield Compact. I believe him to have a rifle as well, since he was observed shooting a rifle on video in December of 2020. There were other conversations where he stated he owned a gun and further even said that his "AR" keeps the government from enslaving him. NESS was also engaged in a conversation where Nadeau said that another individual would buy the gun for him if he were to pay for half the price of an additional firearm. This tells me that NESS is aware

that he cannot legally purchase firearms and is therefore required to obtain firearms through subterfuge. There would be no reason for him to pay for half of another firearm so that an individual would buy this firearm for him.

38. Since this affidavit is being submitted for the limited purpose of enabling a judicial determination of whether probable cause exists to justify the issuance of a search warrant for the described premises, I have not included each and every fact known concerning this investigation to me and others involved in this matter. I have set forth only the facts that I believe are essential to establish the necessary foundation for a search warrant ordering the search of the described premises. Based on the above and the totality of the circumstance, I believe that probable cause exists to search 427551 E 1148 Road, Porum, Oklahoma 74455, within the Eastern District of Oklahoma, the residence of NESS to include all storage places, safes, garages, structures and any automobiles which may be found within the curtilage of said suspected premises, as more fully described in Attachment "A", for evidence of violations of Title 18 United States Code Section 922(g)(1) (Felon in Possession of a Firearm).

Ashley N. Stephens Senior Special Agent, ATF

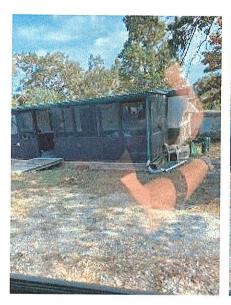
Subscribed and sworn before me this 31st day of August, 2021.

_____Non Q Bush____

United States Magistrate Judge

ATTACHMENT A

The place to be searched is 427551 E 1148 Road, Porum, Oklahoma 74455, Oklahoma, Eastern District of Oklahoma, to include all storage places, safes, garages, structures and any automobiles which may be found within the curtilage of said suspected premises. Place to be searched is described as a white single wide mobile with a green roof, green shudders, green skirting and a covered front porch. The number "17" is on the trailer to the right of the front door, which faces south and on the west side of the trailer. Both are large numbers (approximately 12") and are green in color.









ATTACHMENT B

- 1. Any all firearms with unknown serial numbers, which firearm(s) are possessed by prohibited individual(s). Any items pertaining to the possession, ownership and/or disposition of any firearm, to include but not limited to gun cases, ammunition, ammunition magazines, holsters, spare parts for firearms, firearms cleaning equipment, photographs and video tapes of firearms or person(s) in possession of firearms, acquisition or ownership documents, and receipts for the purchase and for repair of all of these items
- 2. Records to establish the persons who control, possession, custody or dominion over property searched and from which evidence is seized, to include but not limited to: personal mail, checkbooks, personal identification, notes, other correspondence, utility bills, rent receipts, financial documents, keys, photographs, leases, mortgage bills and telephone answering machine introductions and messages, and all records related to telephone records.
- 3. Personal books, and papers reflecting, names, addresses, telephones numbers, and other contact or identification data relating to the acquisition and possession of firearms and ammunition.
- 4. Cellular telephones used to facilitate the acquisition, possession and use of firearms and ammunition, along with computers, lap-tops, other cellular telephones, I-Pads, tablets, or other electronic media. In addition, the applied-for warrant would authorize the forensic examination of these devices for the purpose of identifying electronically stored data.